

## INFORMATION PAPER

DAJA-LA  
19 June 2000

SUBJECT: Advance Medical Directives (Living Wills) and Durable Powers of Attorney for Health Care

1. Purpose. To provide information about Advance Medical Directives (Living Wills) and Durable Powers of Attorney for Health Care.

2. Facts.

a. An Advance Medical Directive (AMD) provides instructions about what should be done when someone is terminally ill and unable to make or communicate a decision concerning medical treatment.

b. In contrast, a durable power of attorney for health care grants authority to make health care decisions on one's behalf that does not terminate upon incapacity. It allows a spouse, trusted relative or friend, chosen by the person creating the power of attorney, to make health care decisions for an ill or incapacitated person, whether or not the illness is terminal.

c. State law normally determines whether such documents are recognized within that state. However, by Federal law, AMDs, created under the military's legal assistance program are recognized to the same extent as those prepared and executed in accordance with state law.

d. An AMD applies only to a case of terminal illness, while a durable power of attorney for health care permits the patient's designated agent to make health care decisions if a physician determines that the patient is incapable of making an informed decision. Additionally, unless a patient is in a persistent vegetative state that is terminal, that patient's AMD may have no effect under a state's law.

e. Today's advances in medical technology may make it difficult for a physician to determine whether an AMD truly constitutes the patient's "informed consent." Perhaps, for example, the AMD was signed years earlier, before the contemplated medical procedure was possible.

f. While an AMD is limited to only medical decisions regarding life-sustaining measures in terminal cases, a durable power of attorney for health care could allow the patient's agent also to make other medical decisions of the patient's behalf. Additionally, a durable power of attorney may extend to non-medical decisions, for example:

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- Whether to make gifts of \$10,000 or less to certain permissible donees, thus reducing the patient's estate and the estate taxes on it.

- Whether to sell the patient's property in the event the expenses of the illness become so great that additional funds are needed.

- Whether to seek admission to a nursing home or to retain a private nurse.

g. In acting pursuant to a durable power of attorney, the agent may consider any preferences or desires expressed by the patient at any time (before or after signing the power of attorney), the decision the agent believes the patient would make if he or she were able, and any information (e.g., diagnosis, prognosis, and pain and risk associated with the contemplated treatment) given by the physician to the agent. The alternative method of handling the patient's business affairs would be through a guardianship proceeding in probate court. Potentially cumbersome and costly, guardianship often can be completely avoided by having a durable power of attorney. Discuss your needs with an attorney or a legal assistance officer.

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